

DAVID R. ZARO (BAR NO. 124334)
JOSHUA A. DEL CASTILLO (BAR NO. 239015)
KENYON HARBISON (BAR NO. 260416)
ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
515 South Figueroa Street, Ninth Floor
Los Angeles, California 90071-3309
Phone: (213) 622-5555
Fax: (213) 620-8816
E-Mail:dzaro@allenmatkins.com
jdelcastillo@allenmatkins.com
kharbison@allenmatkins.com

Attorneys for Receiver
KRISTEN A. JANULEWICZ

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

TOTAL WEALTH MANAGEMENT, INC.; et al.

Defendants.

| Case No. 15-cv-226 BAS (DHB)

NO HEARING REQUIRED

JOINT MOTION OF PLAINTIFF,
SECURITIES AND EXCHANGE
COMMISSION, RECEIVER, KRISTEN
A. JANULEWICZ, NON-PARTY
STRATEGIC FUNDING, INC., AND
DEFENDANT, JACOB COOPÉR, TO
RELEASE FUNDS HELD IN TRUST

[Proposed Order submitted concurrently herewith]

Judge: Hon. Cynthia Bashant

JOINT MOTION

This Joint Motion is made by and between Kristen A. Janulewicz (the "Receiver"), the Court-appointed permanent receiver for Total Wealth Management, Inc., and its subsidiaries and affiliates, including, but not limited to Altus Capital Management, LLC (collectively, the "Receivership Entities" or "Entities" or in the singular, "Entity") and non-Party Strategic Funding, Inc. ("Strategic"), with the concurrence of the Plaintiff Securities and Exchange Commission (the "Commission") and Defendant Jacob Cooper, by and through their counsel of record

15-cv-226 BAS (DHB)

1 or non-party counsel, and who hereby jointly request the relief specified below
 2 ("Joint Motion"), with reference to the following facts:

3 A. On February 4, 2015, this Court entered its Stipulation and Temporary
 4 Restraining Order and Orders (1) Freezing Assets; (2) Prohibiting the Destruction of
 5 Documents; (3) Granting Expedited Discovery; (4) Requiring Accountings;
 6 (5) Appointing a Temporary Receiver, and Order to Show Cause re Preliminary
 7 Injunction and Appointment of Permanent Receiver (the "TRO").

8 B. On February 12, 2015, this Court entered its (1) Preliminary Injunction,
 9 Appointment of a Permanent Receiver, and Related Orders; and (2) Order Vacating
 10 Hearing on Preliminary Injunction (the "PI") (the TRO and PI are referred to herein
 11 collectively as the Court's "Appointment Orders").

12 C. Among other things, the Court's Appointment Orders appointed the
 13 Receiver, initially as a temporary receiver for the Receivership Entities, and later as
 14 the permanent receiver for the Entities.

15 D. The Court's Appointment Orders additionally empowered the Receiver
 16 to take necessary and appropriate action to assume authority and control over,
 17 preserve, and prevent the dissipation, concealment, or disposition of Entity assets,
 18 and to make agreements as necessary to discharge her duties as the Receiver.

19 E. As addressed in the Receiver's First Interim Report and Petition for
 20 Further Instructions ("First Interim Report") (Docket No. 43), millions of dollars in
 21 investor funds were invested in Metropolitan Coffee and Concession Company,
 22 LLC ("Metro Coffee") by the Receivership Entities. Metro Coffee operated Peet's
 23 Coffee stores in Bay Area Rapid Transit District ("BART") stations in San
 24 Francisco, California. The Receiver was appointed in the midst of Metro Coffee's
 25 Chapter 11 bankruptcy case, which remains pending (now as a Chapter 7
 26 bankruptcy case) in the United States Bankruptcy Court for the Northern District of
 27
 28

1 California (the "Bankruptcy Court")¹, and during Metro Coffee's efforts to liquidate
 2 bankruptcy estate property.

3 F. In an effort to protect against further losses in connection with the
 4 Metro Coffee investment, the Receiver worked with the Bankruptcy Court-
 5 designated Responsible Person for Metro Coffee to negotiate the sale of Metro
 6 Coffee's assets (along with the necessary BART permits, held by Aegis Holding
 7 Company, Inc., Metro Coffee's parent). The sale was concluded in May 2015 and
 8 \$260,000 in surplus proceeds from the sale (the "Metro Coffee Funds") were
 9 transferred to the Receiver, by agreement with Strategic, to be held in trust pending
 10 a further determination of each party's rights in and to the Metro Coffee Funds.

11 G. Strategic, a putative creditor of Metro Coffee and Aegis Holding,
 12 claims a security interest in the Metro Coffee Funds equal to or superior to that of
 13 the Receiver.

14 H. The Receiver has reviewed all materials provided by Strategic in
 15 support of its security interest claim and has concluded that Strategic's claim to a
 16 security interest in the Metro Coffee funds equal to or superior to the Receiver's has
 17 or may have merit.

18 I. Strategic and its counsel have reviewed the Receiver's claim that the
 19 Receiver has an equal or superior interest in the Metro Coffee Funds by virtue, *inter*
 20 *alia*, of the equitable fact that such funds presently exist for disposition due to the
 21 actions of the Receiver, and have determined that the Receiver's claim has or may
 22 have merit.

23 J. The Receiver and Strategic now desire to fully compromise and resolve
 24 their competing claims relating to the Metro Coffee Funds, and to avoid the expense
 25 and uncertainty of litigation, by entering into this Joint Motion.

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28 ¹ In re Metropolitan Coffee and Concession Company, LLC, USBC, N.D. Cal.
 Case No. 14-44242.

K. Accordingly, the Receiver and Strategic, with the concurrence of the Commission and Defendant Cooper, have determined to divide the \$260,000 in Metro Coffee Funds, with Strategic receiving \$180,000, and with the Receiver retaining \$80,000.

5 L. Upon the entry of an Order from this Court granting the instant Joint
6 Motion, and without further Order, Strategic will release any and all claims it has or
7 may have against the Metro Coffee Funds, save claims for the payment of the
8 \$180,000 addressed herein. Likewise, upon entry of an Order from this Court
9 granting the instant Joint Motion, the Receiver will release any and all claims the
10 Receivership Entities have or may have against Strategic relating to the \$180,000
11 portion of the Metro Coffee Funds that will be released pursuant to the Joint Motion.

RELIEF REQUESTED

13 As a consequence of the above-described facts, the Receiver and Strategic,
14 with the concurrence of the Commission and Defendant Cooper, jointly move this
15 Court for an Order:

16 1. Authorizing the Receiver to release \$180,000 of the Metro Coffee
17 Funds to Strategic;

18 2. Authorizing the Receiver to retain the remaining \$80,000 of the Metro
19 Coffee Funds for the benefit of the Receivership Entities.

20 3. Authorizing Strategic, the Receiver, and the Receivership Entities to
21 release claims against each other relating to the Metro Coffee Funds.

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1 THE SIGNATORIES BELOW CERTIFY THAT THE CONTENT OF THIS
2 DOCUMENT IS ACCEPTABLE TO ALL PERSONS REQUIRED TO SIGN
3 THIS JOINT MOTION, AND THAT EACH HAS AUTHORIZED THE USE
4 OF AN ELECTRONIC SIGNATURE ON THIS JOINT MOTION.

5 Dated: December __, 2015

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
JOSHUA A. DEL CASTILLO
KENYON HARBISON

9 By: /s/ Joshua A. del Castillo
10 JOSHUA A. DEL CASTILLO
11 Attorneys for Receiver
KRISTEN A. JANULEWICZ

12 Dated: December __, 2015

VLP Law Group LLP
MARK D. TAYLOR

14 By: /s/ Mark D. Taylor
15 MARK D. TAYLOR
16 Attorneys for Non-Party
STRATEGIC FUNDING, INC.

17 Dated: December __, 2015

SECURITIES AND EXCHANGE
COMMISSION
JOHN B. BULGOZDY
DAVID J. VANHAVERMAAT
CAROL LALLY

21 By: /s/ John B. Bulgozdy
22 JOHN B. BULGOZDY
23 Attorneys for Plaintiff
24 SECURITIES AND EXCHANGE
COMMISSION

24 Dated: December 16, 2015

JACOB COOPER

25 By: 
26 Defendant
27 JACOB COOPER

1 **THE SIGNATORIES BELOW CERTIFY THAT THE CONTENT OF THIS**
2 **DOCUMENT IS ACCEPTABLE TO ALL PERSONS REQUIRED TO SIGN**
3 **THIS JOINT MOTION, AND THAT EACH HAS AUTHORIZED THE USE**
4 **OF AN ELECTRONIC SIGNATURE ON THIS JOINT MOTION.**

5
6 Dated: December 17, 2015

7
8 ALLEN MATKINS LECK GAMBLE
9 MALLORY & NATSIS LLP
10 DAVID R. ZARO
11 JOSHUA A. DEL CASTILLO
12 KENYON HARBISON

13 By: /s/ Joshua A. del Castillo
14 JOSHUA A. DEL CASTILLO
15 Attorneys for Receiver
16 KRISTEN A. JANULEWICZ

17
18 Dated: December 17, 2015

19 VLP Law Group LLP
20 MARK D. TAYLOR

21 By: /s/ Mark D. Taylor
22 MARK D. TAYLOR
23 Attorneys for Non-Party
24 STRATEGIC FUNDING, INC.

25
26 Dated: December 17, 2015

27 SECURITIES AND EXCHANGE
28 COMMISSION
29 JOHN B. BULGOZDY
30 DAVID J. VANHAVERMAAT
31 CAROL LALLY

32 By: /s/ John B. Bulgozdy
33 JOHN B. BULGOZDY
34 Attorneys for Plaintiff
35 SECURITIES AND EXCHANGE
36 COMMISSION

37
38 Dated: December __, 2015

39 JACOB COOPER

40 By: _____
41 Defendant
42 JACOB COOPER

PROOF OF SERVICE

Securities and Exchange Commission v. Total Wealth Management, Inc., et al.
USDC, Southern District of California – Case No. 15-cv-226 BAS (DHB)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 515 S. Figueroa Street, 9th Floor, Los Angeles, California 90071-3398.

A true and correct copy of the foregoing document(s) described below will be served in the manner indicated below:

**JOINT MOTION OF PLAINTIFF, SECURITIES AND EXCHANGE
COMMISSION, RECEIVER, KRISTEN A. JANULEWICZ,
NON-PARTY STRATEGIC FUNDING, INC., AND DEFENDANT,
JACOB COOPER, TO RELEASE FUNDS HELD IN TRUST**

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC
FILING ("NEF")** – the above-described document will be served by the Court via NEF. On December 17, 2015, I reviewed the CM/ECF Mailing Info For A Case for this case and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

 - **Vincent J. Brown**
vince@vjblaw.com,vjblaw@gmail.com
 - **John Bulgozdy**
bulgozdyj@sec.gov,larofiling@sec.gov,berryj@sec.gov,
irwinma@sec.gov
 - **Christina Lenore Geraci**
christina@geracilawfirm.com,maria.castro@geracilawfirm.com,jenny.par
k@geracilawfirm.com
 - **Geraci Law Firm**
christina@geracilawfirm.com
 - **Gary Y. Leung, Jr**
leungg@sec.gov,larofiling@sec.gov,himesm@sec.gov,berryj@sec.gov
 - **David J. Van Havermaat**
vanhavermaatd@sec.gov,larofiling@sec.gov,irwinma@sec.gov
 - **Joshua Andrew del Castillo**
jdelcastillo@allenmatkins.com

1 2. **SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for**
2 **each person or entity served):** On December 17, 2015, I served the
3 following person(s) and/or entity(ies) in this case by placing a true and correct
4 copy thereof in a sealed envelope(s) addressed as indicated below. I am readily
5 familiar with this firm's practice of collection and processing correspondence
6 for mailing. Under that practice it is deposited with the U.S. postal service on
7 that same day in the ordinary course of business. I am aware that on motion
8 for party served, service is presumed invalid if postal cancellation date or
9 postage meter date is more than 1 (one) day after date of deposit for mailing in
10 affidavit.

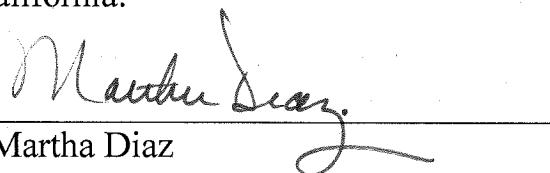
11 Mikel R. Bistrow, Esq.
12 Ballard Spahr LLP
13 655 W. Broadway, Suite 1600
14 San Diego, CA 92101

Via U.S. First Class Mail

15 Richard M. Kipperman
16 PO Box 3010
17 La Mesa, CA 91944-3010

Via U.S. First Class Mail

18 I declare that I am employed in the office of a member of the Bar of this Court
19 at whose direction the service was made. I declare under penalty of perjury under the
20 laws of the United States of America that the foregoing is true and correct. Executed
21 on December 17, 2015 at Los Angeles, California.

16 
17 _____
18 Martha Diaz